IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE K. MOHAN RAM

Crl.O.P.No.33354 of 2007
and M.P.No.1 of 2007

Kishan Lal .. Petitioner

-Vs.-

State, Represented by
Inspector of Police, Crime Branch, CID,
Metro Wing, Government Estate,
Chennai - 600 004 ... Respondent

Prayer: Petition filed under Section 482 of the Criminal Procedure Code to set-aside the order taking cognizance dated 11.10.2007 and the issuance of summons in C.C.No.13970 of 2007 in the Court of 3rd Metropolitan Magistrate, Chennai @ George Town in Crime No.60 of 2006 on the file of the respondent to enable the petitioner to prefer a protest petition against the final order (Charge Sheet No.2 of 2007).

For Petitioner : Mr. R.John Sathyan

For Respondent : Mr. A.Saravanan,
Govt. Advocate (Crl. Side)

O R D E R

The above criminal original petition has been filed by the defacto complainant in Crime No.60 of 2006 on the file of the Inspector of Police, CBCID-Metro Wing, Chennai.

2. The short facts that are necessary for the disposal of the above criminal original petition are set-out below:-

On the basis of the complaint lodged by the defacto complainant a case in Crime No.60 of 2006 came to be registered against (1) Babulal @ Lakshmichand Bafna, (2) Pinku @ Dharmendra Bafna, (3) Mahendar Bafna, (4) Rakesh Bafna, (5) Shanthilal Surana, (6) Gowtham Chand Surana, (7) Vijayaraj Surana, (8) Dinesh Chand Surana, (9) Maran, for the alleged offences under Sections 406, 409, 420, 506 (ii) read with 120-B of the Indian Penal Code; after completing investigation in the case, a final report dated 08.10.2007 was filed only as against two accused, viz., Babulal @ Lakshmichand Bafna and Pinku @ Dharmendra Bafna on 10.10.2007 in

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charge sheet No.2 of 2007 and now the case has been taken on file and the same is pending in C.C.No.13970 of 2007 on the file of the learned III Metropolitan Magistrate, George Town, Chennai. The grievance of the petitioner is that though there is overwhelming materials to bring home the complicity of all the nine accused to the offence, the investigating officer due to undue influence and extraneous considerations did not investigate into the role of the directors of M/s. Surana Corporation Limited against whom the complaint was originally made. According to the petitioner/defacto complainant, no effective investigation was made to unearth the truth for the reasons best known to the respondent.

3. Heard Mr.John Sathyan learned counsel for the petitioner and Mr.A.Saravanan learned Government Advocate (Crl. Side) for the respondent.

4. Learned counsel for the petitioner submitted that the learned Magistrate ought not to have accepted the final report and took cognizance of the offence against only two of the accused when the materials available on record and especially the allegations in the complaint lodged by the petitioner do reveal the complicity of the other accused. According to the learned counsel, the offences alleged are part of the larger conspiracy wherein the accused who are the Directors of M/s.Surana Corporation Limited are the principal offenders and the beneficiaries of the booty, but in the final report the principal offenders have been exonerated from the offences and not even a whisper has been made about them. Learned counsel for the petitioner submitted that before accepting the charge sheet as against two accused only and after noticing that the investigating agency has not filed a charge sheet against the remaining accused inspite of the allegations contained in the complaint lodged by the defacto complainant, the learned Magistrate ought to have put the defacto complainant on notice before accepting such a charge sheet. In support of the above said contentions the learned counsel for the petitioner relied upon the decisions reported in 1985 SCC (Crl) 276 (Bhagwant Singh v. Commissioner of Police) and 1997 SCC (Cri) 1112 (Union Public Service Commission v. S.Papaiah).

5. In the decision reported in 1997 SCC (Cri) 1112 (referred to supra) in paragraph 13 the Apex Court has observed as here-under:-

> "13. The appellaant brought the contents of its communication dated 23-1-1995 to the notice of the learned Metropolitan Magistrate through its Miscellaneous Petition No.2040 of 1995 seeking "reinvestigation" but the learned Magistrate, rejected the petition vide order dated 4-11-1995 observing that "rightly or wrongly that Court had passed an order and it had no power to review the earlier order". Here again the learned Magistrate fell into an error. He was not required to "review" his order. He could have ordered "further investigation" into the case. It appears that the learned Metropolitan Magistrate overlooked the provisions of Section 173(8) which have been enacted to take care of such like situations also. That

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provisions reads:

> "173 (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

The Magistrate could, thus in exercise of the powers under Section 173 (8) CrPC direct the CBI to "further investigate" the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the "new" report to be submitted by the investigating officer would be governed by sub-sections (2) to (6) of Section 173 CrPC. The learned Magistrate, failed to exercise the jurisdiction vested in him by law and his order dated 4-11-1995 cannot be sustained."

6. I have carefully considered the above said submissions made by the learned counsel for the petitioner. In view of the order that is going to be passed in the above criminal original petition, I am not referring to all the facts of the case.

7. As laid down in the decision reported in 1997 SCC (Cri) 1112 (referred to supra) though on the charge sheet filed by the respondent as against two of the accused cognizance has been taken yet if the defacto complainant approaches the Court with an appropriate petition bringing to the notice of the Court, the alleged lapses in the investigation carried out by the respondent and the materials that exists to proceed against the other accused against whom no charge sheet has been filed, the Learned Magistrate is bound in law to consider the same and if he is convinced that further investigation is needed in the case, he can always invoke the provisions in Section 173 (8) of the Criminal Procedure Code.

8. Therefore, in the considered view of this order, the above criminal original petition can be disposed of with the following directions:-

> The petitioner is at liberty to file an appropriate petition before the III Metropolitan Magistrate, George Town, Chennai, incorporating his grievances and the alleged lapses on the part of the investigating agency and seek further investigation in the case. On such petition being filed, the learned Magistrate, shall consider the same in accordance with law and if the learned Magistrate is satisfied that a case has been made out by the

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petitioner for ordering further investigation under Section 173 (8) of the Criminal Procedure Code, the learned Magistrate is entitled to invoke the powers under Sections 173 (8) of the Criminal Procedure Code and direct the respondent to further investigate into the matter.

9. With the above observations, the criminal original petition is disposed of. Consequently the connected MP is closed.

srk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Inspector of Police, Crime Branch, CID,
   Metro Wing, Government Estate, Chennai - 4.

2. III Metropolitan Magistrate, George Town, Chennai.

3. The Public Prosecutor, High Court, Madras-104.

+1 cc to Mr.R.John Sathyan, Advocate Sr.No.74715.

KS(CO)
DCP/18.12

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